UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1990/14
29 August 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Report of an open-ended Working Group established pursuant to Sub-Commission decision 1989/104

Chairman-Rapporteur: Mr. Theo van Boven

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INTRODUCTION

1. By decision 1989/104, the Sub-Commission decided to establish, at the beginning of its forty-second session, a sessional working group of five of its members, appointed by the various regional groups and open to the participation of other members of the Sub-Commission, to prepare an overview and an analysis of the suggestions and proposals which have been made in order to enable the Sub-Commission to better discharge its responsibilities in dealing with violations of human rights as discussed under item 6 of its agenda, taking also into account the functions and duties of the Commission on Human Rights in the matter.

2. The Sub-Commission further decided to request the same sessional working group, in preparing the overview and analysis, to submit to the Sub-Commission its views and recommendations as to the possible advantages and disadvantages of the various suggestions and proposals referred to above, and to present its findings in the light of the deliberations of the Sub-Commission at its forty-second session under the agenda item relating to the question of the violations of human rights and fundamental freedoms.

3. In order to facilitate the implementation of the above two paragraphs, the Sub-Commission also decided to continue discussing the agenda item entitled "Review of the work of the Sub-Commission" at its forty-second session in 1990, expressing the view that the item relating to the question of the violations of human rights and fundamental freedoms should be taken up at an early stage of that session.

4. The Commission on Human Rights, in its resolution 1990/64 of 7 March 1990, invited the Sub-Commission to instruct this Working Group to include in its deliberations an examination of ways and means to avoid any proliferation of studies as well as of draft resolutions or decisions on issues already being dealt with by the Commission.

I. ORGANIZATION OF THE SESSION

5. Upon the nominations made by various regional groups, the Sub-Commission had approved the following composition of the Working Group: Mrs. F.Z. Ksentini, Mr. S. Chernichenko, Mr. Theo van Boven, Mr. C. Heller and Mr. R. Sachar. The Working Group held 3 meetings on 9, 10 and 21 August 1990.

6. At its 1st meeting, held on 9 August 1990, Mr. Theo van Boven was elected Chairman-Rapporteur by acclamation.

7. The following documents were made available to members of the Working Group:

(a) Working paper presented by Mr. Theo van Boven and Mr. Asbjørn Eide (E/CN.4/Sub.2/1989/47);

(b) Working paper presented by Mr. Chernichenko and Mr. Treat (E/CN.4/Sub.2/1989/51);

(c) Working paper submitted by Mr. Chernichenko (E/CN.4/Sub.2/1989/55);

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(d) Working paper presented by Mr. Theo van Boven and Mr. Asbjørn Eide (E/CN.4/Sub.2/1988/43);

(e) Note by the Secretariat containing an informal paper on the role and competence of the Sub-Commission (E/CN.4/Sub.2/1982/3);

(f) Note by the Secretariat containing a list of studies established in accordance with decision 1989/103 of the Sub-Commission (E/CN.4/Sub.2/1990/2).

8. The meetings of the Working Group were open to all members of the Sub-Commission as well as to observers from States and representatives of intergovernmental and non-governmental organizations.

II. GENERAL DEBATE

9. During the brief general debate, it was recalled that pursuant to the directives contained in Sub-Commission decision 1989/104, the Working Group was entrusted with two principal tasks:

(1) To prepare an overview and an analysis of suggestions and proposals made in order to enable the Sub-Commission to better discharge its responsibilities in dealing with violations of human rights;

(2) To submit to the Sub-Commission its views and recommendations and to present its findings.

10. When discussing the matters relating to its programme of work, the Working Group also took into account the provisions of paragraph 11 of Commission of Human Rights resolution 1990/64 by which the mandate of the Working Group had been extended to include an examination of ways and means to avoid any proliferation of studies as well as of draft resolutions or decisions on issues already being dealt with by the Commission. In this connection the Working Group's attention was also drawn to Sub-Commission decision 1989/103 on the list of studies already undertaken and the ways and means of rationalizing proposals for studies and the possibility to drawing up a medium term programme.

11. The Working Group was reminded that according to its mandate it should discuss and assess the feasibility and the possible advantages and disadvantages of the various suggestions and proposals which had been made in order to enable the Sub-Commission to better discharge its responsibilities in dealing with violations of human rights.

12. The Working Group felt that many of the ideas and suggestions concerning the role of the Sub-Commission in dealing with the question of violations of human rights, which had been elaborated in the working papers before the Working Group, merited further reflection. The Working Group considered that one of the basic questions to be discussed in this regard was that relating to the preparation by the Sub-Commission, for the use of the Commission on Human Rights, of a report containing information on violations of human rights and fundamental freedoms from all available sources, as requested in paragraph 2 of Commission resolution 8 (XXIII). In this regard some members expressed serious doubts about the feasibility and the desirability of this so-called

global report. They stated that there was no consensus on the matter. Other participants, however, felt that efforts should be made in this direction and that solutions may be found as regards the many questions and issues which were raised.

13. In the discussion that followed, members of the Working Group and other participants expressed divergent views and put forward various suggestions on this subject which were then summarized by the Chairman-Rapporteur in the form of an informal "inventory of issues and suggestions relating to the global report of the Sub-Commission on the question of violations of human rights" and distributed to participants of the discussion. The main items of this inventory included:

(a) Purpose of the report;

(b) Structure of the report;

(c) Sources and reliability of information;

(d) Applicable norms;

(e) Time period;

(f) Relationship with other procedures and mechanisms;

(g) Modalities of preparation of the report;

(h) Assessment and approval of the report by the Sub-Commission.

14. A summary of the discussion on each of the above-mentioned items is given below.

III. THE ISSUE OF A GLOBAL REPORT OF THE SUB-COMMISSION PURSUANT TO PARAGRAPH 2 OF COMMISSION RESOLUTION 8 (XXIII)

(a) Potential purpose of the report

15. Some participants questioned the objectives and the purpose of the report and its possible use as a United Nations report by interest groups inside and outside the United Nations. The view was expressed by some participants that such reports would be prepared for possible use by the Commission on Human Rights in its examination of questions of violations of human rights, as provided for in paragraph 2 of Commission resolution 8 (XXIII).

(b) Possible structure of the report

16. In connection with questions relating to structure or format of the report, the view was expressed by a number of participants that an essential element of the report should be a part containing a summary (or a compilation or factual survey) of information presented during the session of the Sub-Commission under agenda item 6. It was suggested that a report should include both the information on alleged violations of human rights and the replies given by observers for Governments concerned. From the technical point of view, such compilation of allegations and replies may be based on the

extracts from the summary records of the Sub-Commission's meetings. In this connection, it was pointed out that the initial summary records are always subject to possible corrections.

17. As far as the form of presentation of alleged violations is concerned, four possible approaches to these questions were mentioned. The first possibility was that the information received should be presented on a country-by-country basis. In this respect, it was also observed that the criteria for including or excluding countries should be looked into very carefully in order to avoid selectivity. The second suggestion was to the effect that a thematic approach should be taken. However, if this approach were to be followed, the duplication of work of the thematic special rapporteurs should be avoided. Moreover, analysis would be needed as to which phenomena should be addressed. According to another suggestion, the information should be presented on an article-by-article basis of the Universal Declaration of Human Rights and other relevant human rights instruments. Yet another approach may be that there should be some sort of a combination of previous suggestions.

18. Some participants expressed the view that the envisaged report should include, as a separate part, an analytical compilation of allegations made, whereas the summary records of the appropriate meetings could be annexed to the report. It was also suggested that an attempt should be made in the report to identify phenomena and trends relating to violations of human rights. According to another idea, the report should in addition analyse the root causes of human rights violations and indicate whatever specific phenomena cause them. Some participants mentioned also the question of follow-up of the situations referred to in the report.

19. Another view was expressed that at this stage of consideration of the whole problem, it was premature and inopportune to accept the idea of inclusion of an analytical part into the report of the Sub-Commission.

20. With regard to the question of replies or comments submitted by Governments, it was suggested that such comments received during the session of the Sub-Commission be incorporated in the body of the report, and that governmental comments received after the session, be annexed to the report. It was argued however that in the latter case, non-governmental organizations would not have the possibility to make known their views and comments with regard to the replies received from Governments.

(c) Sources and reliability of information

21. It was recalled that in paragraph 2 of Commission resolution 8 (XXIII), the Sub-Commission was requested to prepare a report containing information "from all available sources". At the same time, the view was expressed that the Sub-Commission, if it were to prepare such a report, should use only such information which was received as part of its public proceedings and contained in official documents.

22. Serious concern was expressed by some participants about possible negative effects of the use in the report of politically motivated information or of allegations which were not sufficiently substantiated. While it would be desirable to have the possibility of checking the reliability of the substance of the information received as well as the credibility of the source

of such information, there were practically no means of achieving such a goal. In this connection, the issue of responsibility in case of inclusion of incorrect information in the report was raised.

23. The idea was put forward that other United Nations sources might be used in preparing the report, including the information contained in the reports of special rapporteurs and the information at the disposal of various working groups on countries and themes. It was, however, argued that this information and these reports were part of other procedures, and that their inclusion in the report would therefore constitute a duplication.

(d) Applicable norms

24. In considering the question of criteria, it was felt that standards contained in the Universal Declaration of Human Rights and other international instruments in the field of human rights could serve as applicable norms.

(e) Time period to be covered in the report

25. In the view of participants, the report should include information on continuing and new patterns of violations of human rights reported since the previous session of the Sub-Commission. The question was raised about the ways and means of handling important information, including replies received from Governments, submitted between sessions of the Sub-Commission.

26. An opinion was expressed that in presenting a continuing pattern of violations of human rights, a historical background could be given for purpose of clarification.

(f) Relationship with other procedures and mechanisms

27. It was generally felt that if a report were to be prepared by the Sub-Commission pursuant to paragraph 2 of Commission resolution 8 (XXIII), such a report should not include any confidential material obtained under the 1503 procedure.

28. The view was also expressed that, taking into account the variety of already existing procedures of the Commission and the Sub-Commission and of the treaty bodies, the preparation by the Sub-Commission of the report in question would serve no purpose.

29. In connection with the issue of duplication of work as regards country resolutions adopted by the Commission on Human Rights, it was felt by some experts that the resolutions on specific cases adopted by the Sub-Commission may be different in nature and in substance than those of the Commission. It was also argued that if the Sub-Commission were to continue to adopt resolutions on specific countries, there would be no need for a global report.

(g) Modalities of preparation of the report

30. Some experts referred to the various difficulties in terms of personnel, finance and technical facilities with regard to the preparation of the report. It was felt that if a global report were to be drafted, such an undertaking might be entrusted to a special drafting group, or to a specially

appointed expert, or to the Secretariat, or it might be a combination of the above-mentioned methods. The view was, however, expressed that it would not be appropriate for the Secretariat to be charged with this task alone.

(h) Assessment and approval of the report by the Sub-Commission

31. In connection with the question of whether the proposed report should include any assessment or judgment by the Sub-Commission, some experts expressed their doubts. It was felt that already the mere discussion of this subject would take considerable time in the Sub-Commission session. Another opinion was that the task might be limited, for the time being, to compilation of information and its submission to the Commission on Human Rights. Some other experts maintained that it is incumbent upon the Sub-Commission to give its own assessment of the various materials placed before it for the benefit of the Commission. They expressed the view that, unless this was done, a mere compilation and the mechanically sending of the same would not serve any purpose. Again other experts raised the particular problem of the time-consuming nature of the preparation, the consideration and approval of the global report.

32. According to another opinion, the Sub-Commission as a body of experts should take advantage of adopting its report by secret ballot. On the other hand, it was argued that in order to uphold the public credibility of the Sub-Commission, the report should be adopted in a public manner, either by a simple decision or through a more elaborate resolution.

33. At the end of the discussion some experts maintained their reservations regarding the proposal for a global report. Other experts felt that the issue was too complex and implied agreed responsibility for any quick decisions and recommendations. In this context, they underlined that the Sub-Commission was not yet prepared to start work on a global report and that there is a need for an agreement on the problems relating to the feasibility, the preparation, and the content of the report before undertaking such a task. Other experts expressed the view that, even if the issue was complex, the present practice of the Sub-Commission in dealing with violations of human rights was not satisfactory, and called for a new approach, and that the idea of a global report should be introduced on an experimental and step-by-step basis.

IV. PROLIFERATION OF STUDIES AND DRAFT RESOLUTIONS

34. Many experts shared their concern that the issues dealt with by the Sub-Commission had increased and that this had resulted in an increase of the number of resolutions and decisions.

35. While a need was felt to attain a certain limitation in the number of draft resolutions and decisions, it was also stated that no quantitative criteria or official limitations could be applied. It was argued that in order to prevent a further increase in draft resolutions, greater discipline and more elaborate consultations among the experts from various regional groups were necessary.

36. In order to achieve greater efficiency in the work of the Sub-Commission and to avoid duplication, the necessity was emphasized of establishing closer relations with the Commission on Human Rights.

37. Certain questions were raised as to how to interpret certain paragraphs of Commission resolution 1990/64 and in particular the phrase in paragraph 11: "issues already being dealt with by the Commission". It was felt that, at least in the case of new developments regarding the situations of continuing violations and in the event of new violations, the Sub-Commission was justified in dealing with such issues. The hope was also expressed that the Chairman of the Commission, who would inform the Sub-Commission about the debate of the Commission, may provide some further clarification.

38. With regard to the issue of proliferation of studies, the opinion was expressed that the problem of a growing number of studies undertaken by the Sub-Commission should not be overestimated. According to another opinion, studies are one of the principal tasks of the Sub-Commission and should be encouraged. Nevertheless, a quantitative restriction of the number of studies could be established and a long-term planning of the respective studies undertaken. It was also suggested that before any new study is assigned to a member of the Sub-Commission, wide consultations should be held among the members with regard to the necessity of such a study and as to the person who should undertake the study. When a new study is to be carried out, it may be desirable that first a preliminary report without financial implications be submitted, after which the Sub-Commission has to decide whether the study should be continued. It was also proposed that the updating of studies should be modest in size and should, as a general rule, be prepared by the Secretariat.

39. It was noted that at present the assistance provided by the Secretariat to experts entrusted with the task of undertaking studies was often insufficient, and that additional consultancy services were needed for this purpose. To ensure this, an increase of the Secretariat's resources was absolutely necessary.

40. It was suggested that work be undertaken in order to establish what follow-up had been given to recommendations included in studies which were already completed. Further, the Sub-Commission should identify major areas not yet covered by studies and establish a medium- and long-term programme for the studies. Also, the Sub-Commission should make the necessary arrangements in order to ensure the in-depth examination of the studies. In this connection, it was suggested that an ad hoc group should be entrusted with such a task.

V. ADOPTION OF THE REPORT OF THE WORKING GROUP

41. The members of the Working Group adopted the report on 24 August 1990.

ANNEX

Inventory of issues and suggestions relating to the global report of the Sub-Commission on the question of violations of human rights

1. Purpose of report

Possible use by the Commission on Human Rights in its examination of questions of violations of human rights.

2. Structure of report

The following elements were mentioned:

(a) Summary or compilation of allegations and replies presented during the session of Sub-Commission (in connection with item 6) extracted from the summary records;

(b) Presentation of alleged violations:

(i) Country by country;

(ii) Through thematic approach;

(iii) Article by article of the Universal Declaration of Human Rights;

(iv) A combination.

(c) Analysis of main problems, phenomena, root causes and trends;

(d) Issue of annexes containing comments by Governments received after the session.

3. Sources and reliability of information

(a) Information received as part of public proceedings;

(b) Issue of reliability and credibility of information.

4. Applicable norms

Standards contained in the Universal Declaration of Human Rights and other widely accepted instruments in the field of human rights.

5. Time period

Continuing and new patterns of violations of human rights reported since the previous session of the Sub-Commission.

6. Relationship with other procedures and mechanisms

(a) 1503 procedure;

(b) Commission on Human Rights, Special Rapporteurs and working groups on countries or themes;

(c) Issue of duplication as regards country resolutions adopted by the Commission on Human Rights;

(d) Sub-Commission's working groups on slavery, indigenous peoples and detention;

(e) Treaty bodies.

7. Modalities of preparation of the report

(a) Drafting group of the WG;

(b) Rapporteur;

(c) Secretariat;

(d) Combination.

8. Assessment and approval by the Sub-Commission

(a) Time factor;

(b) Simple decision or more elaborate resolution;

(c) Public decision - making or secret ballot.

UNITED
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E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1990/15
25 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Item 6 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Note by the Secretary-General

1. In paragraph 8 of its resolution 1989/4 of 31 August 1989, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Secretary-General to provide it, at its forty-second session, with reports, studies, statistics and other documents relating to the question of Palestine and other Arab territories as well as the texts of the relevant United Nations decisions and resolutions.

2. The Secretary-General accordingly draws the attention of the Sub-Commission to the United Nations documents listed hereunder, which have been issued since the closure of the Sub-Commission's forty-first session on 1 September 1989.

General Assembly - Reports

A/44/3	Report of the Economic and Social Council for the year 1989, chapter VI, section C, implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations
A/44/13	Report of the Commissioner-General of the United Nations Relief and Work Agency for Palestine Refugees in the Near East, covering the period from 1 July 1988 to 30 June 1989
A/44/35	Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People
A/44/277-E/1989/82	Report on Israeli trade practices in the occupied Palestinian territories: report of the Secretary-General
A/44/338-E/1989/118	Report on Israeli financial and trade practices in the occupied Syrian Arab Golan: note by the Secretary-General
A/44/352	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories: note by the Secretary-General transmitting the periodic report of the Special Committee submitted in pursuance of General Assembly resolution 43/58 A, paragraphs 19 and 20
A/44/562	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories: report of the Secretary-General (in pursuance of General Assembly resolution 43/58 B)
A/44/563	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories: report of the Secretary-General (in pursuance of General Assembly resolution 43/58 C)

A/44/564	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories: report of the Secretary-General (in pursuance of General Assembly resolution 43/58 D)
A/44/565	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories: report of the Secretary-General (in pursuance of General Assembly resolution 43/58 E)
A/44/566	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories: report of the Secretary-General (in pursuance of General Assembly resolution 43/58 G)
A/44/599	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories: note by the Secretary-General transmitting the twenty-first report of the Special Committee submitted in pursuance of General Assembly resolution 43/58 A
A/44/637	Report of the United Nations Centre for Human Settlements (Habitat) on assistance to the Palestinian people: note by the Secretary-General
A/44/640	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories: report of the Secretary-General (in pursuance of General Assembly resolution 43/58 A)
A/44/643	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories: report of the Secretary-General (in pursuance of General Assembly resolution 43/58 F)
A/44/690 and Add.1	The situation in the Middle East: report of the Secretary-General
A/44/731-S/20968	Report of the Secretary-General on the question of the convening of an international peace conference on the Middle East

A/44/737-S/20971	The situation in the Middle East: report of the Secretary-General
A/45/84	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories: note by the Secretary-General transmitting the periodic report of the Special Committee submitted in pursuance of General Assembly resolution 44/48 A, paragraphs 20 and 21
A/45/306	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories: note by the Secretary-General transmitting the periodic report of the Special Committee submitted in pursuance of General Assembly resolution 44/48 A, paragraphs 20 and 21

Commission on Human Rights - Reports

E/CN.4/1990/3	Report of the Secretary-General on the measures taken to give Commission resolution 1989/1 A and B the widest possible publicity
E/CN.4/1990/4	Note by the Secretary-General listing all the United Nations reports issued since the forty-fifth session of the Commission that deal with the situation of the population of the occupied Arab territories

General Assembly - resolutions

44/2	The uprising (intifada) of the Palestinian people
44/40	The situation in the Middle East
44/41	Question of Palestine
44/42	Question of Palestine
44/48 (A to G)	Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories
44/174	Living conditions of the Palestinian people in the occupied Palestinian territory
44/235	Assistance to the Palestinian people

Commission on Human Rights - resolutions

1990/1	Israeli settlements in the occupied Arab territories
1990/2 (A and B)	Question of violations of human rights in occupied Palestine
1990/3	Human rights in the occupied Syrian Arab territory
1990/6	Situation in occupied Palestine

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1990/16
25 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Item 6 of the provisional agenda

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Note by the Secretary-General

1. At its forty-first session, the Sub-Commission adopted resolution 1989/10 entitled "Situation of human rights in the Islamic Republic of Iran".

By this resolution the Sub-Commission:

"5. Requests the Secretary-General to inform the Sub-Commission, at its forty-second session, of the report of the Special Representative, and of relevant reports by other special rapporteurs or bodies in the field of human rights, as well as of steps which have been and are being taken by United Nations organs to prevent violations of human rights in the Islamic Republic of Iran."

2. The Secretary-General accordingly draws to the attention of the Sub-Commission that, since the Sub-Commission's forty-first session, the Special Representative on the human rights situation in the Islamic Republic of Iran, Mr. R. Galindo Pohl, presented an interim report to the forty-fourth session of the General Assembly (A/44/620). On 15 December 1989, the General Assembly adopted resolution 44/163 entitled "Situation of human rights in the Islamic Republic of Iran".

3. At the invitation of the Government of the Islamic Republic of Iran, the Special Representative carried out a visit to the country from 21 to 28 January 1990.

4. Following his visit to the Islamic Republic of Iran, the Special Representative submitted a report to the Commission on Human Rights at its forty-sixth session (E/CN.4/1990/24). On 7 March 1990, the Commission on Human Rights adopted resolution 1990/79 entitled "Situation of human rights in the Islamic Republic of Iran".

5. At its forty-sixth session, the Commission on Human Rights also had before it reports by the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/13), by the Special Rapporteurs on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1990/17), on Summary or Arbitrary Executions (E/CN.4/1990/22 and Corr.1) and on Religious Intolerance (E/CN.4/1990/46) which refer to the situation of human rights in the Islamic Republic of Iran.

6. At its first regular session of 1990, the Economic and Social Council, taking note of Commission on Human Rights resolution 1990/79, approved the decision of the Commission to extend for another year the mandate of the Special Representative on the situation of human rights in the Islamic Republic of Iran (decision 1990/243).

7. The Special Representative is in contact with the Government of the Islamic Republic of Iran concerning the date and modalities of a second visit for which the Government has extended an invitation. In accordance with Commission on Human Rights resolution 1990/79, the Special Representative will submit an interim report to the General Assembly at its forty-fifth session and a final report to the Commission at its forty-seventh session.

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Distr.
GENERAL

E/CN.4/Sub.2/1990/17
6 July 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Forty-second session
Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Protection of journalists

Report by Mr. Waleed Sadi pursuant to Sub-Commission resolution 1989/2

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INTRODUCTION

1. At its forty-first session, the Sub-Commission, in resolution 1989/2, entitled "Protection of journalists" invited Mr. Sadi to prepare a report on the feasibility of a study on ways and means to extend additional protection and assistance to journalists and mass media personnel while they carry out their duties to expose human rights violations.

2. The Sub-Commission under its mandate as spelled out in resolution 1 (A)(V) of the Commission on Human Rights clearly has the authority and obligation to examine the situation of journalists and representatives of the mass media who expose grave human rights violations so that additional protection and assistance can be extended to them.

3. Journalism and work for the mass media have become the most dangerous professions in the world and their representatives have been exposed in recent years to increasing risks and dangers, including harassment, arrest, kidnapping, torture and even physical liquidation, attesting to the fact that current protection and assistance are not sufficient. That their role in disseminating valuable and urgent information on grave human rights violations is critical, goes without saying. It is established beyond a shadow of doubt that the overwhelming majority of cases and situations of grave violations of human rights are brought to the attention of the international community in the first place through journalists and the mass media. It is a foregone conclusion that in the context of the protection and promotion of human rights, journalists and the mass media perform a distinct and critical role and accordingly deserve special protection and assistance from the very cause that they so ably serve. The journalists' solemn duties to the cause of human rights call for reciprocity from the human rights cause in the form of special protection and assistance.

I. HISTORICAL BACKGROUND

4. During the past 10 years alone, no less than 600 journalists have been killed and even a bigger number have either disappeared or been kidnapped or detained or denied their basic human and professional rights. This phenomenon has been on the rise despite the increasing awareness of human rights as a cause and subject of concern to mankind.

5. This observation was confirmed by the 8th Consultative Meeting of the International and Regional Organizations of Journalists held in Prague in November 1988. That meeting was held to discuss the issue of "Safety of journalists" and came on the heels of a 1987 report entitled "Killed for Truth". Both exercises by the journalists' organization made an attempt to underscore the enormity of the problem and the urgency of the situation of journalists and those working for the mass media.

6. The aforementioned organization has the highest credentials and comprises: the International Organization of Journalists (IOJ), the International Federation of Journalists (IFJ), the Federation of Latin American Journalists (FELAP), the Latin American Federation of Press Workers (FELATRAP), the Union of African Journalists (UAJ), the Federation of Arab Journalists (FAJ), and the Confederation of Asian Journalists (CAJ).

7. Concurrently the International Committee of the Red Cross (ICRC) has made repeated interventions on behalf of journalists and the mass media even though the journalist profession per se does not fall within the scope of the traditional ICRC mandate. The ICRC interventions were motivated by concern for humanitarian issue, as distinguished from human rights per se, of the death, disappearance, captivity or detention of journalists and representatives of the mass media in situations of internal disturbances or war. To this end a meeting of 16 international media organizations was held in Mont-Pelerin, Switzerland, in April 1985. The theme of that gathering was the "Safety of journalists engaged in dangerous missions".

8. The ICRC in fact wanted to re-open the debate on the protection of journalists but on a restrictive basis, i.e., on the humanitarian dimension of the issue. To be sure, the initiative to provide protection to journalists engaged in dangerous missions in areas of armed conflicts was taken by the United Nations General Assembly at its twenty-fifth session when in its resolution 2673 (XXV) of 9 December 1970 it declared that it was essential for the United Nations to obtain complete information concerning armed conflicts and that journalists had an important role to play in that regard.

9. The Mont-Pelerin meeting established an ICRC "hot line" to enable journalists and agents of the mass media to make contact round the clock with a view to alerting the ICRC to any emergency situation and get its intervention on behalf of journalists in peril.

10. Still journalists and agents of the mass media go on being killed, kidnapped, disappeared or detained in order to silence them. Often after they are murdered, their bodies are burned. Others die in detention. Some are assassinated by death squads as revenge for articles exposing grave human rights violations. Even in some democratic countries, journalists and representatives of the mass media are harassed to prevent them from informing the public about denials of fundamental human rights.

11. Journalism and work in the mass media is getting more and more dangerous. The years 1987, 1988 and 1989 showed a drastic rise in the figure of victims of this profession. Many journalists and representatives of the mass media either died, disappeared or were detained in the dark and away from the limelight in those years. This deterioration in the situation of journalists and agents of the mass media worldwide is causing the international community to rise to the challenge with a view to extending to them meaningful protection and assistance.

12. Historically speaking, the interest of mankind in the lot of journalists and agents of the mass media began in the fifties and sixties when many journalists were reported missing in the Korean, Indo-China and other wars.

13. In 1957, the International Federation of Editors-in-Chief raised its voice against the continued mistreatment of journalists and in 1967, the International Commission of Jurists (ICJ) was requested to examine the issue. But the toll of murdered, disappeared or detained journalists continued to rise. The year 1970, when 17 journalists were killed in Cambodia alone, was particularly disastrous.

14. Following this exacerbation of the situation of journalists, agents of the mass media and the International Press Institute (IPI) resumed the process of developing real protection for journalists, and invited the International Federation of Journalists (IFJ) and the International Organization of Journalists (IOJ) to co-operate with the ICJ to elaborate an international convention for the protection of journalists on dangerous missions. Situations falling outside the scope of wars and domestic armed conflicts were, again, ignored. A draft was submitted to the United Nations which was passed on to the Commission on Human Rights to prepare an international treaty on the subject. Unfortunately that exercise never came to fruition and no international agreement along the lines envisaged by the ICJ was ever formulated, much less agreed upon.

15. What ensued from that aborted attempt to extend protection to journalists in wars and war-like conditions was simply the formation in 1970 of the International Professional Committee for the Safety of Journalists on Dangerous Missions which chose Berne, Switzerland, as its base. However, all that the Safety Committee was able to accomplish in this context was the issuing of identity cards for journalists. Unfortunately, even that modest work was suspended in 1975 for lack of agreement between countries.

16. Thus, the only serious effort that occurred to extend protection to journalists and agents of the mass media was within the framework of the ICRC, particularly through the incorporation of an article on the subject in the additional protocol 1 to the Geneva Convention of 12 August 1949, relating to the protection of victims of international armed conflicts. It has yet to be determined how effective that ICRC protection to journalists really is.

17. The most recent effort to extend protection to journalists was by UNESCO in 1978. Under the chairmanship of Mr. Sean MacBride, the UNESCO's International Commission for the Study of Communications Problems widened the discussion beyond the scope of "dangerous missions". Nevertheless, that belated, daring effort was also drowned in disagreement between the participating journalists and Governments. What ensued from the UNESCO intervention, however, was the adoption, in 1978, of a Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War. This general formulation which was adopted more than a decade ago was never elaborated into a more action-oriented agreement.

18. Moreover, the theme of that 1978 Declaration was the assurance of a free flow of information and the access of the public to that information. Nothing was specifically contemplated then to extend protection to journalists in the specific context of human rights violations.

CONCLUSION

19. The murder of four Dutch journalists in El Salvador in 1982 rekindled the interest in the welfare and protection of journalists and representatives of the mass media, but that was about all.

20. Accordingly all the protection that is actually accorded to journalists is confined to the "hot line" service of the ICRC and the periodic meetings of the international and regional journalists' organizations to keep an eye on

developments. Much more is obviously needed and the Sub-Commission is well placed to take the leading role in such an endeavour. Against the backdrop of repeated failed efforts in past years to extend protection to journalists and agents of the press, and the absence of a special and concerted attention to journalists working on human rights, it would seem that now is the time to start the process and rectify the ominous omissions. Journalists and representatives of the mass media provide the cause of human rights with a special service. Accordingly they deserve and are entitled to special protection by the very cause that they so ably serve. In the recognition of their importance in exposing human rights violations in all parts of the world, the Sub-Commission is duty bound to accord them a special attention and protection in a form that has yet to be articulated and formulated.